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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: SEP 13 2000
EAC 00 043 53616

IN RE: Petitioner: [redacted]
Beneficiary

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Canada who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, the petitioner states that her only relative is her sister and her family who are residing in California, and that she has no one to return to in Canada. She claims that moving back to Canada would be an extreme hardship on her financially, that legal proceedings for divorce have been both psychologically and financially draining, and that she is currently negotiating the legal issue through the U.S. court system.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

[redacted]

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States on June 26, 1997. However, her current immigration status or how she entered the United States was not shown. The petitioner married her United States citizen spouse on August 16, 1997 at Santa Barbara, California. On November 22, 1999, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence on January 3, 2000. The discussion will not be repeated here. He noted, however, that there is no indication in the record that the petitioner would be unable to obtain employment in Canada, and that she has resided in the United States less than three years ago.

To establish extreme hardship, the petitioner must demonstrate more than the existence of mere hardship because of family separation or financial difficulties. See Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984), citing Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968), and Matter of W-, 9 I&N Dec. 1 (BIA 1960). Moreover, the loss of

current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

On appeal, the petitioner states:

> The fact is, during my stay in the United States I have all but lost my previous life in Canada. At this time within Canada, I have: no friends, no place to live temporarily or permanently, no immediate or near-term employment opportunities, nor do I have the financial reserves to support such a move. In reality, such a move would result in me living on the street and eating in shelters for some time. Truly, this would be a hardship on me. For the past three years I have forthrightly spent satisfying INS requirements in the hopes of becoming an American Citizen.

The petitioner claims that prior to moving to the United States, she was the art director for [redacted] There is no evidence in the record to establish that the petitioner would be unable to find employment, or unable to pursue her occupation or comparable employment upon her return to Canada. Further, while the petitioner claims that her only relative is her sister and her family residing in California, and she has no family or friends to return to in Canada, it is noted that the petitioner was working and living on her own while in Canada, she is again working and has been living on her own in the United States, and there is no evidence in the record to establish why she could not do the same in Canada upon her return. As noted above, the mere loss of a job and the resulting financial loss, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not constitute extreme hardship. Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996).

The petitioner claims that she is currently negotiating the legal issue of her divorce proceedings through the U.S. court system, and the outcome is still under negotiations. However, there is no evidence in the record to establish the petitioner's claim, and that her presence in the United States is required.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself.

The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.